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ABSTRACT

This publication is a guide to recent tax law changes affecting requirements about acknowledging gifts to education institutions and about quid pro quo disclosure. The Omnibus Budget Reconciliation Act of 1993 states that donors may not deduct cash or noncash contributions of $250 or more to a private school or other charitable organization unless they obtain written acknowledgement from the donee organization. In addition, with any quid pro quo contribution of more than $75, the school must provide specific information to the donor whether or not the donor requests it. These changes affect private schools and colleges and their annual funds, capital campaigns, auctions, special events, and donor recognition programs. The guide answers questions concerning annual giving/capital campaigns, special events, and auctions. Specific topics covered include: under what circumstances to acknowledge a gift, how to acknowledge a gift, when to acknowledge a gift, quid pro quo disclosure requirements, and valuing auction gifts and purchases. The appendixes contain relevant sections from the tax statute, Internal Revenue Service publication 1771 concerning charitable contributions, regulations concerning substantiation requirements, and sample formats for gift acknowledgement. (JB)

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Questions and Answers on Gift Substantiation and Quid Pro Quo Disclosure Statement Requirements for Private Schools

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A Collaborative Project :
Council for Advancement and Support of Education
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United States Catholic Conference

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INTRODUCTION

The Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), signed into law in August 1993, has imposed new requirements for charitable and quid pro quo contributions. Effective January 1, 1994, donors may not deduct cash or noncash contributions of $250 or more to a private school or other charitable organization unless they obtain written acknowledgment from the donee organization. In addition, with any quid pro quo contribution of more than $75, the school must provide specific information to the donor *whether or not the donor requests it.*

These additions to the tax code have major implications for private schools, especially those with annual funds, capital campaigns, auctions, special events, or donor recognition programs. While the previous tax law included substantiation and quid pro quo reporting requirements for donors making charitable contributions, the most recent changes have generated some confusion as to what is actually needed to be in compliance. To date, the Internal Revenue Service has issued only temporary regulations relating to substantiation (see Appendix C) and none for quid pro quo disclosure.

To help answer some of the questions raised by private school development officers about the gift reporting changes resulting from OBRA 1993, the Council for Advancement and Support of Education (CASE), the National Association of Independent Schools (NAIS), and the United States Catholic Conference (USCC) have developed this question-and-answer guide. It is designed to assist school heads, principals, development and business officers, and volunteers in understanding the tax law changes within the context of a private school's development program. In preparing the guide, we asked development officers from around the country for their most pressing questions on substantiation and quid pro quo disclosure, and we received more than 160 responses. While it was impossible to answer all of the questions, we have tried to address those most frequently asked.

From questions concerning acknowledgment of gifts to the annual fund or school auction to recognition dinners and special events, we hope that this guide will become an easy-to-use resource for your school. In order to maximize its value, we recommend

that you review the next section, "How to Use this Guide," which discusses how it is arranged and where to find answers to your questions, and defines key words and terms.

Given the absence of interpretation and the complexity and range of legal issues, the answers here are not meant to be a substitute for the consultation your school *must have* with its own tax counsel on the new requirements. We will send you updates to questions and answers as well as the appendices as needed.

We would like to thank Peter McE. Buchanan, CASE president; Peter D. Relic, NAIS president; and Sister Lourdes Sheehan, RSM, USCC secretary for education, for their support of this project, as well as Deirdre Halloran, USCC associate general counsel, for her invaluable advice and careful reading of this document.

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HOW TO USE THIS GUIDE

CASE, NAIS, and USCC have assembled this guide to help you, the school professional, understand how the changes in the tax law affect your fund-raising activities. The guide is divided into four sections:

(1) Annual Giving/Capital Campaigns;
(2) Special Events;
(3) Auctions; and
(4) Appendices.

In the first three sections, we use a question-and-answer format to walk you through the new requirements imposed by OBRA 1993. The questions pertain to two areas of the law:

substantiation—written acknowledgment of gifts; and

quid pro quo disclosure—literally defined as "one thing in return for another." In tax law, this refers to the requirement that schools disclose the nature and the fair market value of goods and/or services given a donor in consideration for a gift.

There are 47 questions in this guide covering substantiation and quid pro quo disclosure. In addition, we have included sample gift acknowledgment forms and pertinent IRS documents.

To use this guide, we recommend that you:

(1) refer to the section that addresses the area of your question, e.g., Auctions;
(2) next, refer to the appropriate subsection, e.g., "Gifts to the Auction," to find the answer to your particular question.

To assist you, we have put together a Q/A Locator (see next page) identifying the location of particular questions. This easy reference guide will enable you to find answers quickly. However, we suggest that you first read through the entire guide to gain a complete understanding of the requirements under the new tax law.

Disclaimer: The information in this guide is for educational purposes and is intended to provide general rather than specific information. It should *not* be interpreted as legal, tax, or financial advice. Please consult your school's attorney for specific advice on tax issues.

Q/A Locator

Question	Reference
• Under what circumstances to acknowledge a gift to:	
◊ the annual fund	Q. 1, 2
◊ the capital campaign	Q. 1, 2
◊ the auction	Q. 23, 24
• How to acknowledge a gift to:	
◊ the annual fund	Q. 3, 5, 6, 7
◊ the capital campaign	Q. 3, 5, 6, 7
◊ the auction	Q. 25, 27, 43, 44
◊ the rummage sale	Q. 18
◊ other special events	Q. 21, 22
• When to acknowledge a gift to:	
◊ the annual fund	Q. 4
◊ the capital campaign	Q. 4
◊ the auction	Q. 26
• Quid pro quo disclosure requirements for:	
◊ the annual fund	Q. 8, 9, 10, 11, 13, 14, 16
◊ the capital campaign	Q. 8, 9, 10, 11, 13, 14, 16
◊ the auction (gifts to)	Q. 28
◊ the auction (purchases at)	Q. 32, 33, 34, 35
◊ the auction (tickets to)	Q. 36, 37, 38, 39, 41, 42
◊ other special events	Q. 13, 14, 15 16, 17, 20
• When to provide quid pro quo disclosure for:	
◊ the annual fund	Q. 12
◊ the capital campaign	Q. 12
◊ the auction	Q. 29, 32, 33, 34, 35
• Valuing auction gifts/purchases	Q. 30, 34, 35, 43, 44, 47

ANNUAL GIVING/CAPITAL CAMPAIGNS

Gift Substantiation

1. **Under what circumstances is my school required to acknowledge a gift to the annual fund/capital campaign?**

   Effective January 1, 1994, the IRS requires the donor to obtain contemporaneous written acknowledgment ("substantiation") of gifts valued at $250 or more in order to be able to take a charitable deduction for federal income tax purposes. The requirement to obtain substantiation is imposed on the donor, not on the school. However, schools should cooperate in providing substantiation of donor gifts of $250 or more. Many schools already provide gift acknowledgments for cash and noncash ("in-kind") gifts as part of their ongoing donor cultivation efforts.

2. **What if the gift is less than $250?**

   The donor is under no obligation to obtain substantiation for gifts less than $250. For a cash gift under $250, the donor may use the canceled check as substantiation.

3. **How should my school acknowledge cash or noncash gifts of $250 or more to the annual fund/capital campaign if requested to do so by the donor?**

   Your school will want to provide written substantiation for any cash or noncash gift valued at $250 or more. (In such cases, your school is required to *describe* the gift, but *not* to value it.) The IRS does not require any specific form for substantiation of gifts. However, your substantiation should be dated, and it should include:

   - the name of the donor;
   - the date of the gift;
   - the amount of cash contributed or a description of the noncash gift;

- a statement as to whether or not goods or services were provided in consideration of the gift;
- a description and the fair market value of goods or services provided, if any, in consideration of the gift; and
- if applicable, a statement that only intangible religious benefits were provided in consideration of the gift.

4. When should my school provide substantiation?

The donor must obtain substantiation on or before the date by which he or she files a tax return for the year in which the contribution was made or by the due date for filing the tax return, whichever comes first.

5. How should my school acknowledge gifts-in-kind to the annual fund/capital campaign?

Donors who contribute in-kind (noncash) gifts valued at $250 or more will require substantiation in order to meet the new requirements. If requested to provide substantiation of such in-kind gifts, your school should describe the in-kind gift but not value it. It is the donor's responsibility to value the gift. The substantiation statement should also state whether goods or services were provided in exchange for the gift and provide a description and an estimate of the value of any such goods or services.

6. How should my school acknowledge gifts to the annual fund/capital campaign made through payroll deduction?

The legislative history suggests that each payment made to the school will be considered a separate contribution. Only separate contributions of $250 or more require substantiation. Thus, separate payroll contributions below the threshold amount do not require substantiation. Your school may nonetheless wish to acknowledge these gifts in the normal course. If your school does receive a single payroll contribution of $250 or more, you may wish to acknowledge it separately when it is received or to provide an annual substantiation that itemizes each contribution of $250 or more.

N.B. See Appendix C for temporary and proposed regulations regarding payroll deductions.

7. **How should my school acknowledge annual fund/capital campaign gifts made in installment payments?**

As in payroll deduction, each payment made to the annual fund/capital campaign will likely be considered a separate contribution with substantiation required only for separate contributions whose value is $250 or more. For example, if a donor contributes $1,000 to your school's annual fund/capital campaign in five $200 payments, substantiation for the gift is not required. However, if the donor makes a $1,000 contribution to the annual fund/capital campaign in four $250 payments, substantiation will be required. You may acknowledge each payment as received or provide an annual substantiation that itemizes each $250 contribution.

N.B. The IRS has yet to issue anti-abuse rules with regard to writing multiple checks under the $250 substantiation threshold to the same institution within a short time period.

Quid Pro Quo Contribution

8. **If my school provides goods or services to annual fund/capital campaign donors in recognition of their contributions, does this affect the way we acknowledge those gifts? Is the deductibility of donations affected?**

Yes, on both counts. When a school provides a donor with goods or services in consideration for a gift, this is called a quid pro quo contribution. If the gift is $250 or more, your school may wish to combine the substantiation and the quid pro quo disclosure into one statement that:

- identifies the donor;
- states the date of the gift;

- states cash amount or describes noncash gift but does not set a value on it;
- states that goods or services were provided in consideration of the gift;
- provides a description and good faith estimate of the value of the goods or services;
- informs the donor that the charitable deduction is limited to the excess of the value of the gift over the value of the goods or services provided; and
- if applicable, states that only intangible religious benefits were provided in consideration for the gift.

N.B. Quid pro quo disclosure must be given to the donor at the time of solicitation or receipt of the gift.

If the gift is less than $250, no substantiation is required. However, if the gift is more than $75, the school must provide a quid pro quo disclosure statement, which includes a good faith estimate of the value of the goods or services provided and informs the donor that the charitable deduction amount for the gift is limited to the excess of the value of the gift over the value of the goods or services provided.

Quid pro quo disclosure may be made in any reasonable manner likely to come to the attention of the donor, e.g., on solicitation materials, event programs, tickets, etc.

9. What about incidental items such as mugs or bookmarks?

Incidental items such as bookmarks, t-shirts, and mugs are considered by the IRS to be "safe harbors." That is, if the donor makes a gift to the school of $32 or more and the goods or services received consist of a token item the cost of which does not exceed $6.40, then the donor may take a full deduction. Likewise, if the goods or services received by the donor have a value not exceeding 2 percent of the value of the gift or $64, whichever is less, then the donor may claim the full deduction.

N.B. The above dollar amounts represent 1994 figures, which the IRS adjusts annually.

10. What about more substantial items, such as a school chair or a trip?

Generally, more substantial items will be too costly to fall into the IRS "safe harbor" category. In the quid pro quo disclosure statement, your school must identify the fair market value of the goods or services provided and inform the donor that he or she may deduct only the amount of the gift that exceeds the value of the goods or services provided.

11. May my school provide donors the opportunity to decline goods or services given them in return for gifts to the annual fund/capital campaign?

Yes. Your school may advise donors in writing that they have the right to decline any goods or services that the school provides in consideration for the gift. If they do so, they should not be given any ticket or other evidence of privileges related to the campaign.

12. At what time must my school provide a quid pro quo disclosure?

It must be given to the donor at the time of solicitation or receipt of the gift.

SPECIAL EVENTS

13. **If my school decides to hold a recognition dinner for annual fund/capital campaign donors, does the donor's gift become a quid pro quo contribution?**

    Not necessarily. In quid pro quo transactions, the donor makes a gift with the conscious expectation of receiving specific consideration in return. Clearly, if the donor was not aware that he or she would be invited to a dinner when the gift was made, then the contribution should not be considered a quid pro quo contribution.

14. **What about frequent major donors to the annual fund/capital campaign? Do their gifts become quid pro quo contributions because they expect to be invited to an annual dinner?**

    Yes. If the donors are aware of the dinner benefit, the IRS could say they had a conscious expectation when the gift was made, and therefore the rules covering quid pro quo contributions would apply.

15. **If a donor underwrites the cost of food and drink for my school's annual volunteer recognition dinner, should the school subtract the value of the donated goods before estimating the value of the dinner?**

    No. Your school must disclose the actual fair market value of the dinner, including all food and drink, regardless of whether it was donated.

16. **Can my school's donors refuse invitations to annual fund/capital campaign events, thus preserving their right to take a full deduction for their gift?**

    Yes. Your school may allow donors the opportunity to refuse invitations to these events. In that case, the donor should not be given any ticket or other evidence of privileges related to the events.

17. Does my school need to provide a quid pro quo disclosure statement to each person attending our regional alumni receptions?

Yes, if the charge to attend the event is more than $75.

N.B. See #9 for IRS "safe harbor" rules.

18. How does my school acknowledge gifts to the rummage sale?

If the total value of the goods contributed is $250 or more, then the donor may request an acknowledgment from your school. The school should provide substantiation describing the goods contributed, but not stating their value. Valuing the goods is the donor's responsibility.

19. Is the amount paid for a raffle ticket deductible by the purchaser?

No. The IRS does not consider the purchase of chances to win prizes in raffles, lotteries, or similar drawings or contests to be deductible contributions.

20. My school invites a select group of major donors and alumni to attend a special dinner before or after a lecture. The lectures are open to the school community and are part of an endowed lecture series. Donations to help defray lecture expenses are requested but not required. Some of the major donors do not contribute. Should my school provide a quid pro quo disclosure statement?

Since there is no fixed charge for attending the lecture and no one is required to make a contribution, quid pro quo disclosure should not be required.

21. A school hosts an alumni dinner and asks for a contribution of $50 to cover the cost of the meal and reception. If an alumna brings five guests, should she write six separate checks? If she writes one check for $300, can she use it as a receipt or should the school provide—upon request—substantiation for the sum total of the tickets?

The IRS has yet to issue anti-abuse rules with regard to writing multiple checks under the $250 substantiation threshold to the same institution within a short time period. Assuming the alumna writes a single check for $300, she may request substantiation of her payment. However, if $50 represents the full fair market value of the meal and reception, then no part of the payment for the six meals is a deductible contribution, and no substantiation should be provided. In the alternative, substantiation could acknowledge receipt of the $300, but then must indicate that six meals and receptions valued at $300 were received in return. The net result is the same: no deductible contribution.

Likewise, if $50 represents the full fair market value of the meal and reception, then no disclosure is required. This is not a quid pro quo contribution since no part of the payment is a contribution. In these circumstances, in order to avoid misleading ticket purchasers, the school should refrain from using the word "contribution" and instead refer to the requested payment as an admission charge.

22. At the annual auction, a school sells booths to exhibitors, who then donate 15 percent of their net sales from the event to the school's scholarship fund. How does the school acknowledge this type of gift?

The school should provide substantiation upon request from the exhibitor if the gift is $250 or more. To avoid problems with quid pro quo disclosure, the sale of the booth space should be handled as a separate transaction before the event.

N.B. If the school requires all exhibitors to make a 15 percent net sale donation, then the donation is not considered a gift.

AUCTIONS

Gifts to the Auction

23. Under what circumstances is my school required to acknowledge a gift to the auction?

Effective January 1, 1994, the IRS requires substantiation of gifts valued at $250 or more in order for a donor to take a charitable deduction for federal income tax purposes. If your school receives a gift valued at $250 or more and the donor requests an acknowledgment, then you should provide written substantiation. Many schools already provide gift acknowledgments for cash and noncash gifts as part of their ongoing donor cultivation efforts.

24. What if the gift is less than $250?

The donor is under no obligation to obtain substantiation from the school for gifts less than $250. For a cash gift under $250, the donor may use the canceled check as substantiation.

25. How should my school acknowledge cash or noncash gifts of $250 or more to the auction if requested to do so by the donor?

Your school will want to provide written substantiation for any cash or noncash gift valued at $250 or more. (In such cases, your school is required to *describe* the gift, but *not* to value it.) The IRS does not require any specific form for acknowledgment of gifts. However, your substantiation should be dated, and it should include:

- the name of the donor;
- the date of the gift;
- the amount of cash contributed or a description of the noncash gift;

- a statement as to whether or not goods or services were provided in consideration of the gift;
- a description and the fair market value of goods or services provided, if any, in consideration of the gift; and
- if applicable, a statement that only intangible religious benefits were provided in consideration of the gift.

26. When should my school provide substantiation?

The donor must obtain substantiation on or before the date by which he or she files a tax return for the year in which the contribution was made or by the due date for filing the tax return, whichever comes first.

27. How should my school acknowledge gifts-in-kind to the auction?

Donors who contribute in-kind (noncash) gifts valued at $250 or more will require substantiation in order to meet the new requirements. If requested to provide substantiation of such in-kind gifts, your school should describe the in-kind gift, but not value it. It is the donor's responsibility to value the gift. The substantiation statement should also state whether goods or services were provided in exchange for the gift and provide a description and an estimate of the value of any such goods or services.

28. What if my school gives goods or services, such as a school sweater, to a donor who contributes an item to the auction?

When a school provides a donor with goods or services in consideration for a gift, this is called a quid pro quo contribution. If the gift is $250 or more, your school may wish to combine the substantiation and the quid pro quo disclosure into one statement that:

- identifies the donor;
- states the date of the gift;

- states cash amount or describes noncash gift, but does not set a value on it;
- states that goods or services were provided in consideration of the gift;
- provides a description and good faith estimate of the value of the goods or services;
- informs the donor that the charitable deduction is limited to the excess of the value of the gift over the value of the goods or services provided; and
- if applicable, states that only intangible religious benefits were provided in consideration for the gift.

N.B. Quid pro quo disclosure must be given to the donor at the time of solicitation or receipt of the gift

If the gift is less than $250, no substantiation is required. However, if the gift is more than $75, the school must provide a quid pro quo disclosure statement, which includes a good faith estimate of the value of the goods or services provided and informs the donor that the charitable deduction amount for the gift is limited to the excess of the value of the gift over the value of the goods or services provided. Quid pro quo disclosure may be made in any reasonable manner likely to come to the attention of the donor, e.g., on solicitation materials, event programs, tickets, etc.

29. At what time must my school provide a quid pro quo disclosure?

It must be given to the donor at the time of solicitation or receipt of gift.

30. Under what circumstances does the IRS require the donor to complete Form 8283?

To take a charitable contribution for a noncash gift to the auction of more than $500, the donor must complete IRS Form 8283. A gift in the more than $500 to $5,000 range does not need to be professionally appraised. A noncash gift valued at more than $5,000 must be valued by a qualified appraiser. Both the school and the appraiser must sign Form 8283. By signing the form, the school does not agree to the appraisal, but merely acknowledges receipt.

Purchases at the Auction

31. Does any part of the price paid for an auction purchase constitute a charitable contribution to the school?

That depends on the purchase price in relation to the fair market value of the item purchased. Only the amount, if any, in excess of the fair market value of an item purchased can be considered a charitable contribution.

32. Under what conditions must my school disclose the value of an item purchased at an auction?

If the purchase price of the auction item is more than $75 and is greater than its fair market value, then your school must provide a quid pro quo disclosure statement because the purchase was made partially as a charitable contribution and partially in exchange for goods or services (in this case, the auction item) provided by your school.

We recommend listing the fair market value of auction items and the disclosure statement in the auction booklet.

33. What if the purchase is at or below the item's fair market value?

In this case, your school does not need to provide a quid pro quo disclosure statement because the purchase was not made partially as a charitable contribution. *No part* of the purchase price qualifies as a charitable contribution.

We recommend listing the fair market value of auction items and the disclosure statement in the auction booklet.

34. Does my school need to disclose the value of one-of-a-kind auction items?

It may be difficult, if not impossible, to establish the fair market value of one-of-a-kind gifts, such as art works, autographed sports memorabilia, or similarly unique items. In the absence of any reliable fair market value or regulations to implement the 1993 tax law, the IRS is likely to say that the purchase price is the fair market value. A statement to that effect should be included in the auction booklet. In this situation, no part of the purchase price at the auction would be considered a deductible charitable contribution.

35. Is my school responsible for valuing items purchased at the auction?

Yes, if any donor/purchaser is to obtain any deduction for a payment of more than $75 and that payment exceeds the value of the item purchased at auction. Your school must provide a good faith estimate of the fair market value of items purchased at the auction in order to comply with the quid pro quo disclosure rules for payments of more than $75. In addition, if a contribution of $250 or more is made in connection with the purchase of any auction item, any substantiation provided to the donor must indicate the fair market value of the item provided in return for the contribution.

We recommend listing the fair market value of auction items and the disclosure statement in the auction booklet.

36. Is an admission ticket to my school's auction deductible?

The price of the auction admission ticket should be fully deductible *if* no goods or services, e.g., food, drink, etc., are provided in exchange by the school and the ticket is simply a means of raising additional funds.

37. What if my school provides goods or services?

In this case, only the excess of the ticket price over the fair market value of the goods or services provided in exchange to the donor is tax deductible.

38. What types of goods or services should my school include when estimating the per person fair market value of the ticket?

Goods and services include the cost of the refreshments, food, entertainment, or other benefits provided to the donor.

39. Must my school provide disclosure with respect to the purchase of an auction admission ticket?

Your school must provide a quid pro quo disclosure statement (as described above) only if the auction ticket costs more than $75 and your school provided goods or services in exchange for the admission ticket.

40. Does a ticket purchaser need to complete IRS Form 8283?

No. Only a donor who makes a noncash gift of more than $500 to the auction needs to complete Form 8283.

Auction Event Scenario

St. Swithun's-by-the-Sea holds its annual spring fête in the ballroom of The Marble House, a museum mansion owned by a local corporation and generally rented out for $2,500 per night. The corporation donates the use of the ballroom to St. Swithun's. This special event, which features dinner, dancing, a casino, and an auction, nets well over $100,000. Tickets to the event are sold for $200 per person, and the proceeds from the tickets, the auction, and the casino are directed to the school's annual, scholarship, and endowment funds. The fête is limited to 300 members of the school community—alumni, parents, grandparents, and friends—and is St. Swithun's most important fund-raising effort of the year.

Dinner is a gourmet affair, and the cost of the meal is contributed by a parent. An equivalent meal in the area is priced at $80 per person. The school pays for wine during dinner and for the wages and gratuities of serving staff, which are calculated at $40 per person. There is a cash bar during the fête, for which the school is charged an hourly set-up and bartender fee.

The school hires a local band for the evening ($1,500) and rents equipment and decorations for the casino ($2,000). The casino is a recent addition to the fête and involves play money only. Guests receive $25 worth of play cash with each admission ticket, and they can use the play money at the casino tables or to purchase designated auction items.

The auction is the primary attraction of the evening and generates the greatest amount of revenue for the school. Auction items are listed in the auction catalog and, where possible, the fair market value of each item is provided. Auction items for one year's fête included:

(1) an antique clock donated by a parent;
(2) a collection of *National Geographic* magazines donated by a parent, self-valued at $200;
(3) a trip for two to London donated by a local travel agency, fair market value of $1,500;
(4) 60,000 frequent flier miles donated by an alumnus, market valued at $2,000;

(5) a parking space near the main school building donated by the school, no stated value;
(6) 10 hours of legal tax advice donated by an alumna, fair market value of $2,500;
(7) an island condo for a week, including airfare, meals, and club use, donated by an alumnus, fair market value of $8,000; and
(8) a baseball mitt autographed by a 1980 World Series MVP donated by a parent, no stated value.

41. Must the school provide disclosure for tickets sold to this event?

The school must provide a quid pro quo disclosure statement of the fair market value of the goods and services received for each ticket sold, because each ticket exceeds $75 in price and was bought partially as a contribution to the school and partially in consideration of goods and services provided by the school. If the contribution portion of any payment is $250 or more (i.e., for the purchase of several tickets together), the school may also be asked to provide substantiation.

42. What should the school include in its estimate of the fair market value of the event?

The school should include in its estimate the per person value of the dinner, entertainment, and other benefits received *(even those that were donated)*. This can be indicated most conveniently on the ticket itself. When the fair market value of items is not known, the school should find comparable benefits with established values.

43. How should the school acknowledge the value of the donations/contributions of the ballroom and dinner?

The ballroom and the dinner are noncash gifts. Under the substantiation provisions, the school need only describe the gifts and state whether it provided any goods or services in exchange.

44. Who is responsible for setting the fair market value of a gift to the auction?

Under the substantiation provisions, the school is not required to value any gift donated to the auction. This is the donor's responsibility. If a donor requests substantiation, the school should describe the gift, but not value it.

45. Is there a special rule governing the income tax deduction for gifts of tangible personal property to a school for sale at an auction?

Yes. Gifts of tangible personal property such as books, art works, stamp collections, or other similar items are subject to a so-called "related use" rule for income tax purposes. A donor making a gift of tangible personal property is not permitted to deduct an amount in excess of his or her tax cost or basis (the original cost of the property to the donor) unless the school will keep the gift and use it in some tax-exempt manner. In other words, if a donor gives the school a painting that she bought for $500 seven years ago but which is now worth $10,000, and the school hangs the painting in a conspicuous place in a classroom building and uses it in an art study program, the donor can deduct the full $10,000 value. However, if the painting is to be sold at auction, the donor's deduction is limited to $500—no matter what price it brings at the auction. If the fair market value should be less than the tax cost or basis, the donor's deduction is limited to the fair market value.

46. Is there a special rule regarding the deduction for gifts of inventory as when, for example, a book dealer gives extra textbooks to a school?

Yes. Gifts of inventory are deductible only to the extent of the donor's tax cost or basis (the original cost of the property to the donor), but generally a dealer will have deducted that cost or tax basis as part of the cost of doing business. Under these circumstances, no deduction for the gift is available. If the book dealer has expensed the cost of purchasing 5,000 books and finds that he has 200 extra which he plans to give to the school, either for academic purposes or for sale at the auction, he obtains no additional deduction unless, as a result of the gift, he has shipping or other costs that are not otherwise deductible business costs.

47. How should St. Swithun's establish the value of items sold at its auction?

The school should attempt to establish verifiable fair market values for each of the nine auction items and include them in the auction catalog. Documents or records of conversations with vendors verifying or establishing fair market values of the items should be kept for at least four years. Where it is not possible to establish a fair market value for one-of-a-kind items, the purchase price will be presumed to be the fair market value, and no part of the payment will be considered a contribution. This should be noted in the auction catalog.

(1) Antique clock

Gift to the auction

- Parent gives the clock to the school for auction. The clock was purchased for $525 and has a fair market value of $3,500.
- Parent receives substantiation describing the clock and stating that no goods or services were provided in exchange.
- Parent completes IRS Form 8283 and attaches it to his federal income tax return for the year of the gift, but he is not required to obtain an independent appraisal since the gift is in the more than $500 to $5,000 range.
- School hires an appraiser who states that the clock has a fair market value of $3,500.
- Clock's fair market value ($3,500) is listed in the auction catalog.
- Since parent has made a gift of tangible personal property that will not be used by school for its exempt purposes, parent's income tax deduction is limited to his tax basis of $525.

Purchase at the auction

- The clock is bought for $5,500.
- Purchaser receives a combined substantiation and quid pro quo disclosure statement from the school giving the clock's fair market value ($3,500) and stating that the amount of the purchase price that is deductible for federal

tax purposes is limited to the excess of the amount paid for the clock over its value as provided by the school—that is, $2,000 is tax deductible.

(2) Magazines

Gift to the auction

- The parent is not required to obtain substantiation because the gift is valued at less than $250; however, the parent is a major donor and has requested substantiation, which the school provides, describing the magazines and stating that no goods or services were provided in exchange.
- The school calls several used book dealers in town to establish a fair market value of $55 for the magazines.
- The magazines and their fair market value ($55) are listed in the auction catalog.
- Since parent has made a gift of tangible personal property which will not be used by school for its exempt purposes, parent's income tax deduction is limited to whichever is less—her tax basis (the original cost of the property to the donor) or the fair market value.

Purchase at the auction

- The magazines are bought for $55.
- No quid pro quo disclosure statement is required because the purchase price is less than $75 and because no part of the payment is a contribution.

(3) London trip

Gift to the auction

- Travel agency receives substantiation for the gift (promotional tickets) and completes IRS Form 8283 since the gift is valued at $1,500—above the Form 8283 threshold.
- The school verifies the fair market value of the tickets ($1,500) with several airlines.

- The gift and the fair market value ($1,500) are listed in the auction catalog.
- Since the gift represents inventory, the travel agency's deduction is limited to cost unless cost has already been deducted as a business expense, in which case there is no deduction.

Purchase at the auction

- The tickets are bought for $3,000.
- The school provides the purchaser a combined substantiation and quid pro quo disclosure statement indicating the fair market value of the tickets ($1,500) and stating that the amount of the deductible contribution is limited to the excess paid for the tickets over their value, i.e., $1,500.

(4) Frequent flier miles

Gift to the auction

- The alumnus does not take the miles as a charitable contribution since the IRS position is unclear as to whether frequent flier miles are a capital asset for which any deduction is allowed.
- The school calls the airline issuing the miles and verifies that the fair market value of the tickets is $2,000, which it publishes in the auction catalog.

Purchase at the auction

- The miles are bought for $800.
- No substantiation or disclosure is necessary, since the purchase price is below the fair market value of the tickets. No part of the payment is a contribution.

(5) Parking space

Gift to the auction

- No substantiation is required because the school itself donated the space.
- The school verifies that an equivalent parking space on its campus is being

rented to tennis club members for $250 per year.

- The gift and the fair market value ($250) are listed in the auction catalog.

Purchase at the auction

- The parking space is bought for $700.
- The purchaser receives a combined substantiation and quid pro quo disclosure statement indicating the fair market value of the space ($250) and stating that the amount of the deductible contribution is limited to the excess paid for the space over its value, i.e., $450.

(6) Legal advice

Gift to the auction

- Such services are not deductible as charitable contributions.
- The alumna provides the school with her firm's hourly legal fee schedule to confirm that the fair market value of her time is $2,500.
- The gift and fair market value ($2,500) are listed in the auction catalog.

Purchase at the auction

- The legal advice is bought for $2,500.
- The purchaser does not receive a quid pro quo disclosure or substantiation statement, since the purchase price was at fair market value, and no part of the payment is a contribution.

(7) Island condo

Gift to the auction

- The alumnus receives substantiation describing the gift.
- The school verifies the alumnus' valuation of the package at $8,000. This includes the condo, the airline tickets, meals, club dues, and staff.

- The alumnus obtains a deduction only for out-of-pocket costs, not including rental value or depreciation on condo, club dues, or other personal expenses from which the purchaser derives incidental benefit.
- The alumnus completes IRS Form 8283 because the value of the gift is more than $500.
- The school lists the gift and the fair market value ($8,000) in the auction catalog.

Purchase at the auction

- The package is bought for $10,000.
- The purchaser receives a combined substantiation and quid pro quo disclosure statement indicating the fair market value of the package ($8,000) and stating that the amount of the deductible contribution is limited to the excess paid for the package over its value, i.e., $2,000.

(8) Baseball mitt

Gift to the auction

- The auction bidding will set the mitt's fair market value, since it is a one-of-a-kind item.
- A statement to that effect is placed in the auction catalog.
- The school provides substantiation of the gift, but does not value it.
- Since the parent has made a gift of tangible personal property that will not be used by the school for its exempt purposes, the parent's income tax deduction is limited to whichever is less, her tax basis (the original cost of the property to the donor) or the fair market value.

Purchase at the auction

- The mitt is bought for $250.
- The purchaser receives no substantiation or quid pro quo disclosure because no part of the payment is a contribution.

APPENDICES

Appendix A: Omnibus Budget Reconciliation Act of 1993

SECTION 170(f)(8)

(8) SUBSTANTIATION REQUIREMENT FOR CERTAIN CONTRIBUTIONS.—

(A) GENERAL RULE.—No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) CONTENT OF ACKNOWLEDGEMENT.—An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term "intangible religious benefit" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) SUBSTANTIATION NOT REQUIRED FOR CONTRIBUTIONS REPORTED BY THE DONEE ORGANIZATION.—Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

SECTION 6115(a)

SEC. 6115. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

[Sec. 6115(a)]

(a) DISCLOSURE REQUIREMENT.—If an organization described in section 170(c) (other than paragraph (1) thereof) receives a quid pro quo contribution in excess of $75, the organization shall, in connection with the solicitation or receipt of the contribution, provide a written statement which—

(1) informs the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the organization, and

(2) provides the donor with a good faith estimate of the value of such goods or services.

[Sec. 6115(b)]

(b) QUID PRO QUO CONTRIBUTION.—For purposes of this section, the term "quid pro quo contribution" means a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization. A quid pro quo contribution does not include any payment made to an organization, organized exclusively for religious purposes, in return for which the taxpayer receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context.

Amendments

P.L. 103-66, § 13173(a)(1)

Act Sec. 13173(a) amended subchapter B of chapter 61 by redesignating Code Sec. 6115 as Code Sec. 6116 and by inserting after Code Sec. 6114 a new Code Sec. 6115 to read as above.

The above amendment applies to quid pro quo contributions made on or after January 1, 1994.

P.L. 100-647, § 1012(aa)(5)(A)

Act Sec. 1012(aa)(5)(A) amended subchapter B of chapter 61 by redesignating section 6114 as section 6115 and inserting after section 6113 new section 6114 to read as above.

The above amendment applies to tax periods the due date for filing returns for which (without extension) occurs after December 31, 1988.

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Charitable Contributions - Substantiation and Disclosure Requirements

UNDER THE NEW LAW, CHARITIES WILL NEED TO PROVIDE NEW KINDS OF INFORMATION TO DONORS. Failure to do so may result in denial of deductions to donors and the imposition of penalties on charities.

Legislation signed into law by the President on August 10, 1993, contains a number of significant provisions affecting tax-exempt charitable organizations described in section 501(c)(3) of the Internal Revenue Code. These provisions include: (1) new substantiation requirements for donors, and (2) new public disclosure requirements for charities (with potential penalties for failing to comply). Additionally, charities should note that donors could be penalized by loss of the deduction if they fail to substantiate. **THE SUBSTANTIATION AND DISCLOSURE PROVISIONS APPLY TO CONTRIBUTIONS MADE AFTER DECEMBER 31, 1993.**

Charities need to familiarize themselves with these tax law changes in order to bring themselves into compliance. This Publication alerts you to the new provisions affecting tax-exempt charitable organizations. Set forth below are brief descriptions of the new law's key provisions. The Internal Revenue Service plans to provide further guidance in the near future.

Donor's Substantiation Requirements

Documenting Certain Charitable Contributions. — Beginning January 1, 1994, no deduction will be allowed under section 170 of the Internal Revenue Code for any charitable contribution of $250 or more unless the donor has contemporaneous written substantiation from the charity. In cases where the charity has provided goods or services to the donor in exchange for making the contribution, this contemporaneous written acknowledgement must include a good faith estimate of the value of such goods or services. Thus, taxpayers may no longer rely solely on a cancelled check to substantiate a cash contribution of $250 or more.

The substantiation must be "contemporaneous." That is, it must be obtained by the donor no later than the date the donor actually files a return for the tax year in which the contribution was made. If the return is filed after the due date or extended due date, then the substantiation must have been obtained by the due date or extended due date.

The responsibility for obtaining this substantiation lies with the donor, who must request it from the charity. The charity is not required to record or report this information to the IRS on behalf of donors.

The legislation provides that substantiation will not be required if, in accordance with regulations prescribed by the Secretary, the charity reports directly to the IRS the information required to be provided in the written substantiation. At present, there are no regulations establishing procedures for direct reporting by charities to the IRS of charitable contributions made in 1994. Consequently, charities and donors should be prepared to provide/obtain the described substantiation for 1994 contributions of $250 or more.

There is no prescribed format for the written acknowledgement. For example, letters, postcards or computer-generated forms may be acceptable. The acknowledgement does not have to include the donor's social security or tax identification number. It must, however, provide sufficient information to substantiate the amount of the deductible contribution. The acknowledgement should note the amount of any cash contribution. However, if the donation is in the form of property, then the acknowledgement must describe, but need not value, such property. Valuation of the donated property is the responsibility of the donor.

The written substantiation should also note whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution and, if so, must provide a description and good-faith estimate of the value of the goods or services. In the new law these are referred to as "quid pro quo contributions."

Please note that there is a new law requiring charities to furnish disclosure statements to donors for such quid pro quo donations in excess of $75. This is addressed in the next section regarding Disclosure By Charity.

If the goods or services consist entirely of intangible religious benefits, the statement should indicate this, but the statement need not describe or provide an estimate of the value of these benefits. "Intangible religious benefits" are also discussed in the following section on Disclosure By Charity. If, on the other hand, the donor received nothing in return for the contribution, the written substantiation must so state.

The present law remains in effect that, generally, if the value of an item or group of like items exceeds $5,000, the donor must obtain a qualified appraisal and submit an appraisal summary with the return claiming the deduction.

The organization may either provide separate statements for each contribution of $250 or more from a taxpayer, or furnish periodic statements substantiating contributions of $250 or more.

Separate payments are regarded as independent contributions and are not aggregated for purposes of measuring the $250 threshold. However, the Service is authorized to establish anti-abuse rules to prevent avoidance of the substantiation requirement by taxpayers writing separate smaller checks on the same date.

If donations are made through payroll deductions, the deduction from each paycheck is regarded as a separate payment.

A charity that knowingly provides false written substantiation to a donor may be subject to the penalties for aiding and abetting an understatement of tax liability under section 6701 of the Code.

Disclosure by Charity of Receipt of Quid Pro Quo Contribution

Beginning January 1, 1994, under new section 6115 of the Internal Revenue Code, a charitable organization must provide a written disclosure statement to donors who make a payment, described as a "quid pro quo contribution," in excess of $75. This requirement is separate from the written substantiation required for deductibility purposes as discussed above. While, in certain circumstances, an organization may be able to meet both requirements with the same written document, an organization must be careful to satisfy the section 6115 written disclosure statement requirement in a timely manner because of the penalties involved.

A quid pro quo contribution is a payment made partly as a contribution and partly for goods or services provided to the donor by the charity. An example of a quid pro quo contribution is where the donor gives a charity $100 in consideration for a concert ticket valued at $40. In this example, $60 would be deductible. Because the donor's payment (quid pro quo contribution) exceeds $75, the disclosure statement must be furnished, even though the deductible amount does not exceed $75.

Separate payments of $75 or less made at different times of the year for separate fundraising events will not be aggregated for purposes of the $75 threshold. However, the Service is authorized to develop anti-abuse rules to prevent avoidance of this disclosure requirement in situations such as the writing of multiple checks for the same transaction.

The required written disclosure statement must:

inform the donor that the amount of the contribution that is de-

deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the value of goods or services provided by the charity, and

2. provide the donor with a good-faith estimate of the value of the goods or services that the donor received.

The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when the associated contribution is actually received.

The disclosure must be in writing and must be made in a manner that is reasonably likely to come to the attention of the donor. For example, a disclosure in small print within a larger document might not meet this requirement.

In the following three circumstances, the disclosure statement is not required.

(1) Where the only goods or services given to a donor meet the standards for "insubstantial value" set out in section 3.01, paragraph 2 of Rev. Proc. 90-12, 1990-1 C.B. 471, as amplified by section 2.01 of Rev. Proc. 92-49, 1992-1 C.B. 987 (or any updates or revisions thereof);

(2) Where there is no donative element involved in a particular transaction with a charity, such as in a typical museum gift shop sale.

(3) Where there is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context. An example of an intangible religious benefit would be admission to a religious ceremony. The exception also generally applies to de minimis tangible benefits, such as wine, provided in connection with a religious ceremony. The intangible religious benefit exception, however, does not apply to such items as payments for tuition for education leading to a recognized degree, or for travel services, or consumer goods.

A penalty is imposed on charities that do not meet the disclosure requirements. For failure to make the required disclosure in connection with a quid pro quo contribution of more than $75, there is a penalty of $10 per contribution, not to exceed $5,000 per fundraising event or mailing. The charity may avoid the penalty if it can show that the failure was due to reasonable cause.

Please note that the prevailing basic rule allowing donor deductions only to the extent that the payment exceeds the fair market value of the goods or services received in return still applies generally to all quid pro quo contributions. The $75 threshold pertains only to the obligation to disclose and the imposition of the $10 per contribution penalty, not the rule on deductibility of the payment.

Department of the Treasury
Internal Revenue Service
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Appendix C: Substantiation Requirement for Certain Contributions: Temporary and Proposed Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8544]

RIN 1545-AS28

Substantiation Requirement for Certain Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations are being issued to provide guidance to the public with respect to the substantiation requirement contained in section 170(f)(8) of the Internal Revenue Code. Section 170(f)(8) was added to the Code by section 13172 of the Omnibus Budget Reconciliation Act of 1993. The guidance contained in these regulations affects donors of charitable contributions of $250 or more.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein, 202-622-4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1431.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble in the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the substantiation requirement for the deduction of certain charitable contributions under section 170(f)(8) of the Internal Revenue Code (Code). Section 170(f)(8) was added by section 13172 of the Omnibus Budget Reconciliation Act of 1993.

Need for Temporary Regulations

The provisions contained in this Treasury decision are needed immediately to provide guidance to the public with respect to the application of the substantiation requirement of section 170(f)(8). Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) of title 5 of the United States Code.

Explanation of Provisions

Section 170 allows a deduction for contributions to or for the use of certain specified organizations, including those organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

To be deductible under section 170 of the Code, a payment to or for the use of a qualified organization must be a gift—that is, a payment of money or transfer of property without adequate consideration. Rev. Rul. 67-246, 1967-2 C.B. 104. Thus, if a taxpayer receives goods or services from the organization in consideration for a payment, the taxpayer may not deduct as a charitable contribution more than the excess of the amount paid over the value of the consideration received therefor. Id. The Service has determined, however, that if a taxpayer receives only certain inconsequential or insubstantial benefits in consideration for a payment to a qualified organization, the taxpayer may deduct the entire payment as a charitable contribution. Rev. Proc. 90-12, 1990-1 C.B. 471. See also Rev. Proc. 92-49, 1992-1 C.B. 987 (amplifying Rev. Proc. 90-12 by providing that certain free, unordered, low-cost items that accompany charitable solicitations are considered to have insubstantial value). (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.)

Section 170(f)(8) disallows a deduction for any contribution of $250 or more that is not substantiated by a written acknowledgment from the donee organization. The acknowledgment must provide information regarding (a) the money or other property contributed, and (b) any goods or services provided by the donee organization in whole or partial consideration for the contributed money or other property.

Section 170(f)(8) is a compliance provision, intended to facilitate the enforcement of the substantive requirements for a deduction under section 170. The compliance purpose of section 170(f)(8) does not require that an acknowledgment refer to goods or services provided by a donee organization to a donor if the provision of goods or services does not affect the amount that the donor is entitled to deduct as a charitable contribution. Therefore, the temporary regulations provide that goods or services given in return for a contribution need not be taken into account for purposes of section 170(f)(8), if the goods or services have insubstantial value under the guidelines provided in Rev. Procs. 90-12 and 92-49 (and any successor documents). (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.)

The legislative history of the 1993 Act states that Congress intended a similar exception to apply in connection with the disclosure requirement of section 6115. See H. Rep. No. 213, 103d Cong., 1st Sess. 566 (1993). Although the legislative history does not discuss application of such an exception to the substantiation requirement of section 170(f)(8), the Service has determined that such an exception is equally appropriate.

Some donee organizations receive contributions through arrangements in which employers withhold amounts from the wages of their employees in accordance with pledges made by the employees, and pay the withheld amounts to the donee organizations. Donee organizations that use these arrangements may not know the identity of the contributing employees or the amounts contributed by each employee. Therefore, these donee organizations may face difficulty in preparing the acknowledgments contemplated by section 170(f)(8).

The statutory language and legislative history of section 170(f)(8) suggest that Congress appreciated the difficulties of applying the substantiation requirement to contributions made by payroll deduction and intended that these difficulties be addressed by regulations. Section 170(f)(8)(E) directs the Secretary to "provide such regulations as may be necessary or appropriate" to carry out the purposes of section 170(f)(8), "including regulations that may provide that some or all of the requirements of [that section] do not apply in appropriate cases." The Conference Report on the 1993 Act expresses the conferees' intent that the Secretary exercise his regulatory authority "to clarify the treatment of contributions made through payroll deductions." H. Rep. No. 213, supra, at 567.

Accordingly, the temporary regulations also provide special rules for contributions made by payroll deduction. The special rules allow taxpayers to substantiate contributions made by payroll deduction by a

combination of two documents: (a) a document furnished by the taxpayer's employer that evidences the amount withheld from the taxpayer's wages, and (b) a document prepared by the donee organization that states that the organization does not provide goods or services as whole or partial consideration for any contributions made by payroll deduction.

The special rules for contributions made by payroll deduction, like the underlying statutory provisions, do not require that the document prepared by the donee organization take any particular form. Similarly, although donors must obtain the document in time to meet the "contemporaneous" requirement of the statute (generally, by the time they file the relevant tax return), the rules do not require the donee organization to prepare the document at any particular time. Therefore, if a donee organization includes the statement contemplated by the rules on a pledge card prepared to solicit contributions in 1995, a donor who receives the card before timely filing the donor's 1994 tax return could use the card to substantiate contributions made in 1994. Contributions made by payroll deduction during 1994 can thus be substantiated under these rules even if the donee organization has used pledge cards for 1994 contributions that do not include the statement contemplated by the rules. As a result, the Service understands that donee organizations will be able to comply with the "contemporaneous" requirement for 1994 contributions. The Service invites comments, however, on whether transitional relief from the "contemporaneous" requirement is needed for 1994 contributions.

The temporary regulations also provide that, for purposes of applying the $250 threshold provided in section 170(f)(8)(A) to contributions made by payroll deduction, the amount withheld from each paycheck is treated as a separate contribution. Thus, the substantiation requirement of section 170(f)(8) will not apply to contributions made by payroll deduction unless the employer deducts $250 or more from a single paycheck for the purpose of payment to a donee organization. This rule is consistent with the legislative history of section 170(f)(8). See H. Rep. No. 213, supra, at 565 n.29 ("In cases of contributions paid by withholding from wages, the deduction from each paycheck will be treated as a separate payment.").

Some charitable organizations solicit contributions in the form of payroll deductions or lump-sum payments for the purpose of distributing the amounts received to other charitable organizations. The temporary regulations provide that, in such cases, the distributing organization is treated as a donee organization for purposes of the substantiation requirement of section 170(f)(8). This rule applies regardless of whether the distributing organization distributes the contributed funds pursuant to the donor's instructions. The rule does not apply, however, if a distributee organization provides goods or services to the donor as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Joel S. Rutstein, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602, are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * § 1.170A-13T also issued under 26 U.S.C. 170(f)(8)(E).

Par. 2. Section 1.170A-13T is added to read as follows:

§ 1.170A-13T Substantiation requirement for certain contributions.

(a) *Certain goods or services that have insubstantial value not taken into account.* Goods or services that have insubstantial value under the guidelines provided in Revenue Procedures 90-12, 1990-1 C.B. 471, and 92-49, 1992-1 C.B. 987, (and any successor documents) need not be taken into account for purposes of section 170(f)(8). (See § 601.601(d)(2)(ii) of the Statement of Procedural Rules, 26 CFR part 601.)

(b) *Contributions made by payroll deduction*—(1) *Form of substantiation.* A contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization may be substantiated, for purposes of section 170(f)(8), by—

(i) A pay stub, Form W-2, or other document furnished by the employer that evidences the amount withheld by the employer for the purpose of payment to a donee organization, and

(ii) A pledge card or other document prepared by the donee organization that includes a statement that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

(2) *Application of $250 threshold.* For the purpose of applying the $250 threshold provided in section 170(f)(8)(A) to contributions made by the means described in paragraph (b)(1) of this section, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

(c) *Distributing organizations as donees.* An organization described in section 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of section 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c). This paragraph (c) does not apply, however, to a case in which the distributee organization provides goods or services as part of a transaction structured with a view to avoid taking the goods or services into account in determining the amount of the deduction to which the donor is entitled under section 170.

(d) *Effective date.* The rules of this section apply to contributions made on or after January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 4. Section 602.101(c) is amended by adding the entry "1.170A-13T . . . 1545-1431" in numerical order to the table.

Approved: May 6, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

(FR Doc. 94-12829 Filed 5-26-94; 8:45 am)

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Substantiation

(1) Your school's substantiation must include:

- the name of the donor;
- the date of the gift;
- the amount of cash contributed or a description of the noncash gift;
- a statement as to whether or not goods or services were provided in consideration of the gift;
- a description and the fair market value of goods or services provided, if any, in consideration of the gift; and
- if applicable, a statement that only intangible religious benefits were provided in consideration of the gift.

(2) There is no prescribed format for written acknowledgments. Your school can use letters, postcards, or computer-generated forms, etc., as long as the information above is included. The acknowledgment does not need to include the donor's social security or tax identification number.

(3) The donor must obtain an acknowledgment on or before the date by which he or she files a tax return for the year in which the contribution was made or by the due date for filing the tax return, whichever comes first.

(4) Sample Letters:

Annual Giving

June 1, 1994
Dear [Donor]:

Thank you for your gift of $250 made on June 1, 1994 to the St. Swithun's-by-the-Sea annual fund. We greatly appreciate your contribution, which makes it possible for us to maintain the level of academic excellence for which we have always been known.

St. Swithun's-by-the-Sea did not provide you with any goods or services in whole or partial consideration for your contribution to the annual fund. [Or, if applicable: We provided only intangible religious benefits to you in whole or partial consideration for your gift.]

Please visit us when you are next in the area—we would enjoy having you back on campus.
Sincerely,

Head of School

Auction

February 8, 1994
Dear [Donor]:

Thank you for your gift made on February 8, 1994 of a 27" Sony color television (model KB2727) to the St. Swithun's-by-the-Sea annual fête. We appreciate your continued support of the school and this important event.

St. Swithun's-by-the-Sea did not provide you with any goods or services in whole or partial consideration for your contribution to the auction effort. [Or, if applicable: We provided only intangible religious benefits to you in whole or partial consideration for your gift.]
Sincerely,

Head of School

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(5) Acknowledgment Form:

_____

[Donee Organization]

_____

[Date]

I. NAME OF DONOR: _____

DONOR'S ADDRESS: _____

_____

II. AMOUNT OF CASH CONTRIBUTION: $_____

OR

DESCRIBE NONCASH CONTRIBUTION: _____

III. DATE OF CONTRIBUTION: _____

IV. _____(School) PROVIDED NO GOODS OR SERVICES IN CONSIDERATION, IN WHOLE OR IN PART, FOR YOUR CONTRIBUTION.

V. _____(School) PROVIDED _____

_____(Describe Goods or Services)

TO YOU IN CONSIDERATION, IN WHOLE OR IN PART, FOR YOUR CONTRIBUTION.

VI. _____'S (School) GOOD FAITH ESTIMATE OF THE VALUE OF THE GOODS OR SERVICES IS $_____.

VII. _____(School) PROVIDED ONLY INTANGIBLE RELIGIOUS BENEFITS IN CONSIDERATION, IN WHOLE OR IN PART, FOR YOUR CONTRIBUTION.

☐ YES ☐ NO

VIII. THE AMOUNT OF YOUR CONTRIBUTION THAT IS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES IS LIMITED TO THE EXCESS OF THE AMOUNT CONTRIBUTED ($_____) OVER THE VALUE OF GOODS OR SERVICES PROVIDED ($_____), I.E., $_____.

Combined Substantiation and Quid Pro Quo Disclosure

(1) When a school provides a donor with goods or services in consideration for a gift of more than $75, it is required to provide quid pro quo disclosure. If the gift is $250 or more, the school may wish to combine substantiation and quid pro quo disclosure into one statement that:

- identifies the donor;
- states the date of the gift;
- states cash amount or describes noncash gift, but does not set a value on it;
- states that goods or services were provided in consideration of the gift;
- provides a description *and* good faith estimate of the value of the goods or services;
- informs the donor that the charitable deduction is limited to the excess of the value of the gift over the value of the goods or services provided; and
- includes a statement, if applicable, that only intangible religious benefits were provided in consideration for the gift.

(2) There is no prescribed format for this combined statement. However, all of the above information must be included.

(3) IMPORTANT: If your school decides to combine substantiation and quid pro quo disclosure into one statement, then this statement must be provided at the time of solicitation or receipt of the gift. Your school cannot wait until the end of the year to provide a combined statement.

(4) Sample Letters:

Annual Giving

May 18, 1994

Dear [Donor]:

Thank you for your gift of $2,000 made on May 18, 1994 to the St. Swithun's-by-the-Sea annual fund. We greatly appreciate your contribution, which makes it possible for us to maintain the level of academic excellence for which we have always been known. As you know, First Circle donors receive a school rocking-chair as a token of our appreciation.

The amount of your contribution ($2,000) that is deductible for federal income tax purposes is limited to the excess of the amount you contributed over the value of the chair ($300) we provided, i.e., $1,700. [If applicable: We also provided you with intangible religious benefits in consideration, in whole or in part, for your gift.]

Please visit us when you are next in the area—we would enjoy having you back on campus.

Sincerely,

Head of School

Auction

June 6, 1994

Dear [Donor]:

Thank you for your purchase today for $1,000 of the 27" Sony color television at the St. Swithun's-by-the-Sea annual auction. The amount of your contribution that is deductible for federal income tax purposes is limited to the excess of the television's purchase price ($1,000) over its fair market value ($600), i.e., $400. [If applicable: We provided you with intangible religious benefits in consideration, in whole or in part, for your gift.]

We look forward to seeing you next year.

Sincerely,

Annual Auction Chair

(5) Acknowledgment Form:

_____

[Donee Organization]

_____

[Date]

I. NAME OF DONOR: _____

DONOR'S ADDRESS: _____

_____

II. AMOUNT OF CASH CONTRIBUTION: $_____

OR

DESCRIBE NONCASH CONTRIBUTION: _____

III. DATE OF CONTRIBUTION:_____

IV. _____(School) PROVIDED _____

_____(Describe Goods or Services)

TO YOU IN CONSIDERATION, IN WHOLE OR IN PART, FOR YOUR CONTRIBUTION.

V. _____'S (School) GOOD FAITH ESTIMATE OF THE VALUE OF THE GOODS OR SERVICES IS $_____.

VI. _____(School) PROVIDED ONLY INTANGIBLE RELIGIOUS BENEFITS IN CONSIDERATION, IN WHOLE OR IN PART, FOR YOUR CONTRIBUTION.

☐ YES ☐ NO

VII. THE AMOUNT OF YOUR CONTRIBUTION THAT IS DEDUCTIBLE FOR FEDERAL INCOME TAX PURPOSES IS LIMITED TO THE EXCESS OF THE AMOUNT CONTRIBUTED ($_____) OVER THE VALUE OF GOODS OR SERVICES PROVIDED ($_____), I.E., $_____.

A Collaborative Project

Council for Advancement and Support of Education
Suite 400, 11 Dupont Circle
Washington DC 20036

National Association of Independent Schools
1620 L Street, NW
Washington, DC 20036

United States Catholic Conference
3211 4th Street, NE
Washington, DC 20017